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Constitutional Law

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1599. Civil or personal rights

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3140 to 3142, 3475 to 3669

Government actions affecting civil or personal rights must often pass a strict scrutiny test when challenged on equal protection grounds.

An individual's right to personal liberty is a fundamental right for equal protection purposes.¹ Other recognized fundamental rights, for purposes of equal protection analysis, include the right to vote, the right of interstate travel, rights guaranteed by the First Amendment,² and other rights explicitly or implicitly guaranteed by the Constitution,³ including the right of reproductive freedom⁴ and the right to privacy.⁵ When fundamental rights are affected, strict scrutiny analysis⁶ is used to evaluate an equal protection claim,⁷ and the government must demonstrate a greater public need for the restriction, considering the nature of the affected right, and the extent to which the restriction intrudes upon it.⁸

Although the right to travel is considered a fundamental right, residence requirements do not warrant the application of the strict scrutiny test where the restriction impinges the exercise of that right only to a limited extent,⁹ only those statutory classifications that so burden the right to travel that they function, in effect, as penalties upon those migrating to a new state are subject to strict scrutiny.¹⁰ Thus, residency requirements affecting the

right to travel will be upheld against an equal protection challenge unless they penalize the ability to receive some basic necessity of life, such as welfare benefits or nonemergency medical care, or affect some other fundamental right, such as the right to vote.¹¹

Among the restrictions or classifications that do not infringe upon a fundamental right, for equal protection purposes, are statutes requiring mandatory DNA¹² or HIV¹³ testing of persons charged with or convicted of certain crimes, restrictions on the right to possess firearms,¹⁴ a motorcycle helmet law,¹⁵ and a statute authorizing medical examiners to remove corneal tissue from corpses for transplantation.¹⁶

For equal protection purposes, legislation prohibiting assisting suicide, while permitting the withdrawal of life-sustaining treatment, bears a rational relationship to the legitimate goals of prohibiting intentional killing and preserving life; preventing suicide; maintaining the physicians' role as healers; protecting vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia even where a provision allowing palliative care related to the withdrawal of life-sustaining treatment may have the foreseen but unintended effect of hastening the patient's death.¹⁷

States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards those individuals are rational, and any special accommodation is required only by statute.¹⁸

Depending on the situation, the Equal Protection Clause may provide no further protection beyond that provided by the Free Exercise Clause of the First Amendment.¹⁹

Under the equal protection clause of a particular state's constitution, laws that classify individuals based on race or religious beliefs are completely repudiated.²⁰ A marriage-solemnization statute which allows solemnization of marriage by religious officials designated by certain religious groups, but omits equivalent officials of secular groups, such as humanists, and other religions, violates equal protection.²¹

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Footnotes

1 Mont.—Powell v. State Compensation Ins. Fund, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).
Tenn.—Doe v. Norris, 751 S.W.2d 834 (Tenn. 1988).
Freedom from bodily restraint
Freedom from bodily restraint is a fundamental right protected by the Equal Protection Clause.
U.S.—Ebonie S. v. Pueblo School Dist. 60, 695 F.3d 1051, 285 Ed. Law Rep. 21 (10th Cir. 2012), cert. denied, 133 S. Ct. 1583, 185 L. Ed. 2d 577 (2013).
Incarceration exception
Personal liberty, when deprived by lawful incarceration, is not a fundamental right for purposes of equal protection analysis.
Ill.—People v. Shephard, 152 Ill. 2d 489, 178 Ill. Dec. 724, 605 N.E.2d 518 (1992).
2 Fla.—Libertarian Party of Florida v. Smith, 687 So. 2d 1292 (Fla. 1996).
Ill.—Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).
Mo.—In re Marriage of Woodson, 92 S.W.3d 780 (Mo. 2003).
Ohio—State v. Williams, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).
Pa.—Doe v. Miller, 886 A.2d 310 (Pa. Commw. Ct. 2005), order aff'd, 587 Pa. 502, 901 A.2d 495 (2006).

Residency in state

The Equal Protection Clause guarantees that a citizen of the United States can, of his own volition, become a citizen of any state of the Union by a bona fide residence therein, with the same rights as other citizens of that state.

Minn.—Schatz v. Interfaith Care Center, 811 N.W.2d 643 (Minn. 2012).

Spiritual matters

Mont.—Armstrong v. State, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).

English requirement

A state constitutional amendment requiring all state and local government officials and employees to "act" only in English during the performance of government business violated the Equal Protection Clause, since it burdened the fundamental First Amendment right of persons who do not speak English to petition the government for redress of grievances, but was not drawn with narrow specificity to meet the purported compelling state interest of promoting English as a common language.

Ariz.—Ruiz v. Hull, 191 Ariz. 441, 957 P.2d 984 (1998).

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U.S.—Ebonie S. v. Pueblo School Dist. 60, 695 F.3d 1051, 285 Ed. Law Rep. 21 (10th Cir. 2012), cert. denied, 133 S. Ct. 1583, 185 L. Ed. 2d 577 (2013).

Mo.—In re Marriage of Woodson, 92 S.W.3d 780 (Mo. 2003).

As to what are personal constitutional rights, see §§ 721 et seq.

As to parenting rights, see § 1584.

Reputation protected by state constitution

Pa.—R. v. Com., Dept. of Public Welfare, 535 Pa. 440, 636 A.2d 142 (1994).

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Alaska—State, Dept. of Health & Social Services v. Planned Parenthood of Alaska, Inc., 28 P.3d 904 (Alaska 2001).

Ohio—State v. Williams, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).

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Ill.—Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).

Mont.—Powell v. State Compensation Ins. Fund, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

As to constitutional right to privacy, generally, see §§ 1164 to 1203.

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§ 1277.

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Mass.—Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1052 (2002).

Mont.—Powell v. State Compensation Ins. Fund, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

Nev.—Williams v. State, 118 Nev. 536, 50 P.3d 1116 (2002).

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N.J.—Abbott v. Burke, 100 N.J. 269, 495 A.2d 376, 26 Ed. Law Rep. 670 (1985).

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U.S.—Town of Southold v. Town of East Hampton, 477 F.3d 38 (2d Cir. 2007).

Alaska—Public Employees' Retirement System v. Gallant, 153 P.3d 346, 217 Ed. Law Rep. 712 (Alaska 2007).

Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

Minor restrictions

Minor restrictions on travel do not amount to the denial of a fundamental right to equal protection.

U.S.—Joseph v. Hyman, 659 F.3d 215 (2d Cir. 2011).

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Mich.—Barrow v. City of Detroit Election Com'n, 301 Mich. App. 404, 836 N.W.2d 498 (2013), appeal denied, 494 Mich. 866, 831 N.W.2d 461 (2013) and appeal denied, 494 Mich. 866, 831 N.W.2d 461 (2013).

N.C.—Town of Beech Mountain v. County of Watauga, 324 N.C. 409, 378 S.E.2d 780 (1989).

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U.S.—Connelly v. Steel Valley School Dist., 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013).

Ohio—State ex rel. Brown v. Summit County Bd. of Elections, 46 Ohio St. 3d 166, 545 N.E.2d 1256 (1989).

As to the validity of residence requirements for voting, see § 1422.

As to residence requirements for medical assistance, see § 1477.

First Amendment rights

An ordinance relating to the distribution of handbills in public places and restricting the issuance of permits to residents is violative of equal protection as applied to a nonresident. N.Y.—Blue Bird Coach Lines, Inc. v. City of Niagara Falls, 53 N.Y.2d 731, 439 N.Y.S.2d 336, 421 N.E.2d 828 (1981).

12 U.S.—Wilson v. Collins, 517 F.3d 421 (6th Cir. 2008).
Ill.—In re Jonathon C.B., 2011 IL 107750, 354 Ill. Dec. 484, 958 N.E.2d 227 (Ill. 2011), as modified on denial of reh'g, (Nov. 28, 2011).
Minn.—In re Welfare of M.L.M., 781 N.W.2d 381 (Minn. Ct. App. 2010), aff'd, 813 N.W.2d 26 (Minn. 2012).
N.D.—State v. Leppert, 2003 ND 15, 656 N.W.2d 718 (N.D. 2003).

13 Ga.—Adams v. State, 269 Ga. 405, 498 S.E.2d 268, 87 A.L.R.5th 803 (1998).
Ill.—People v. Adams, 149 Ill. 2d 331, 173 Ill. Dec. 600, 597 N.E.2d 574 (1992).
Ohio—State v. Gonzalez, 193 Ohio App. 3d 385, 2011-Ohio-1542, 952 N.E.2d 502 (6th Dist. Lucas County 2011).

14 **A.L.R. Library**
Validity, and propriety under circumstances, of court-ordered HIV testing, 87 A.L.R.5th 631.
U.S.—National Rifle Ass'n of America, Inc. v. McCraw, 719 F.3d 338 (5th Cir. 2013), cert. denied, 134 S. Ct. 1365, 188 L. Ed. 2d 297 (2014).
Cal.—People v. Brown, 227 Cal. App. 4th 451, 173 Cal. Rptr. 3d 812 (3d Dist. 2014), review filed, (Aug. 1, 2014).
Ill.—Wilson v. County of Cook, 2012 IL 112026, 360 Ill. Dec. 148, 968 N.E.2d 641 (Ill. 2012).
N.Y.—Sgueglia v. Kelly, 45 Misc. 3d 335, 990 N.Y.S.2d 794 (Sup 2014).
Pa.—Com. v. Scarborough, 2014 PA Super 65, 89 A.3d 679 (2014), appeal denied, 102 A.3d 985 (Pa. 2014).

Classification of assault weapons

15 Cal.—People v. Zondorak, 220 Cal. App. 4th 829, 163 Cal. Rptr. 3d 491 (4th Dist. 2013).
Neb.—Robotham v. State, 241 Neb. 379, 488 N.W.2d 533 (1992).
16 Fla.—State v. Powell, 497 So. 2d 1188 (Fla. 1986).
17 U.S.—Vacco v. Quill, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997).

Ban in manslaughter statute

A general prohibition in a manslaughter statute of assisted suicide did not, on its face, violate the equal protection rights of mentally competent, terminally ill adults since the ban bore a close and substantial relationship to the State's legitimate interests.
Alaska—Sampson v. State, 31 P.3d 88 (Alaska 2001).
18 U.S.—Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001); Bryant v. New York State Educ. Dept., 692 F.3d 202, 284 Ed. Law Rep. 1 (2d Cir. 2012), cert. denied, 133 S. Ct. 2022, 185 L. Ed. 2d 885 (2013).
19 Me.—Blount v. Department of Educational and Cultural Services, 551 A.2d 1377, 51 Ed. Law Rep. 167 (Me. 1988).
20 La.—Soloco, Inc. v. Dupree, 707 So. 2d 12 (La. 1998).
21 U.S.—Center for Inquiry, Inc. v. Marion Circuit Court Clerk, 758 F.3d 869 (7th Cir. 2014).